

April 27, 2001

Ms. Donna Caton  
Chief Clerk  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62794

Re: WPS Energy Services, Inc.  
Docket No. 00-0199

Dear Ms. Caton:

Enclosed please find Reply to Briefs on Exceptions on behalf of WPS Energy Services, Inc., which has been filed electronically with the Clerk of the Illinois Commerce Commission this date.

Sincerely,

Edward C. Fitzhenry

ECF/alc

cc: Service List

Enclosure/31282

IN THE STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

WPS ENERGY SERVICES, INC.	)	
	)	
APPLICATION FOR CERTIFICATE OF	)	Docket No. 00-0199
SERVICE AUTHORITY UNDER SECTION	)	(Reopened)
16-115 OF THE PUBLIC UTILITIES ACT	)	

**REPLY TO BRIEFS ON EXCEPTIONS**  
**ON BEHALF OF WPS ENERGY SERVICES, INC.**

NOW COMES WPS Energy Services, Inc. (WPS-ESI), by its attorneys, Lueders, Robertson & Konzen, and for its Reply to Briefs on Exceptions and pursuant to 83 Ill. Adm. Code Part 200.830, states the following.

Briefs on exceptions have been submitted on behalf of the Illinois Commerce Commission Staff (“Staff”), Blackhawk Energy Services, L.L.C. (“Blackhawk Energy”), and the International Brotherhood of Electric Workers (“IBEW”) Locals 15, 51, and 702. WPS-ESI responds below to positions taken by these parties in relation to the Hearing Examiner’s Proposed Order on Reopening (“HEPO”). WPS-ESI’s failure to respond specifically to any argument or position should not be construed as an endorsement of same.

**ILLINOIS COMMERCE COMMISSION STAFF**

Staff recognizes the HEPO is consistent with the Illinois Commerce Commission’s (Commission) recent order in Blackhawk Energy Services, L.L.C., Ill. C.C. Dkt. No. 01-0174 (April 6, 2001) construing the reciprocity provision. Therefore, Staff does not offer any suggested replacement statement or finding as would otherwise be required by the Commission’s Rules of Practice. (Staff Br. at 2).

Staff also concurs with the HEPO’s determination that the Commission had authority to

reopen this proceeding, presumably authority founded under Section 10-113 of the Public Utilities Act (“Act”) (220 ILCS 5/10-113) and the Commission’s Rules of Practice, 83 Ill. Adm. Code Part 200.900. (Staff Br. at 2).

WPS-ESI has responded to the propriety of the Staff Report in its evidentiary response as detailed in the HEPO as well as in its Initial Brief, and incorporates same by reference. Furthermore, WPS-ESI restates its position that the Commission does not have the right to reopen this proceeding under the facts and circumstances at hand, and the stated authority is not applicable to ARES such as WPS-ESI.

#### RESPONSE TO BLACKHAWK ENERGY SERVICES L.L.C.

As did WPS-ESI, Blackhawk Energy recognizes the procedural irregularities associated with the Order Reopening Proceeding, including the authority relied upon by the Commission, and the suspect hearing procedure that followed. Many of the arguments raised by Blackhawk Energy have been raised by WPS-ESI throughout this reopened proceeding.

In the end, Blackhawk Energy recommends, “The Commission should modify the Proposed Order and enter an Order that identifies the numerous procedural errors to ensure that they are not repeated in future proceedings.” (Blackhawk Energy Br. at 14). WPS-ESI would not object to such a modification.

#### RESPONSE TO INTERNATIONAL BROTHERHOOD OF ELECTRIC WORKERS

The IBEW brief should be stricken, disregarded or given little, if any, weight.

First, the IBEW brief on exceptions was not filed in accordance with the Hearing Examiner’s, schedule. The brief on exceptions was due on April 24, 2001, but was not served until April 25, 2001, a day later. No explanation was offered for the late filing. This is not the first time IBEW has

ignored the Hearing Examiner's schedule in this proceeding. It's Initial Brief was also filed a day late, and no explanation was offered. The most recent late filing is especially disconcerting insofar as the schedule calls for submission of replies to briefs on exceptions two days from the IBEW filing, April 27, 2001.

The IBEW brief on exceptions is not in accord with the Notice issued on April 10, 2001 by the Hearing Examiner, and 83 Ill. Adm. Code Part 200.830 (b). The Notice and the aforesaid rule specifically requires replacement language if a party intends to except to a portion of the Hearing Examiner's Proposed Order. IBEW's brief fails in this regard. Therefore, its brief should be stricken.

Notwithstanding the foregoing procedural irregularities and prejudices, WPS-ESI responds to the IBEW brief, which is long on rhetoric and short on fact and law. The Commission should, at the outset, completely disregard arguments prefaced by claims that a "fix was in". (IBEW Br. at 1).

IBEW begins its argument by suggesting "states such as Illinois ought to have the right to experiment with different forms of transition...". (IBEW Br. at 2). No statutory citation is offered for this position. The Electric Service Customer Choice and Rate Relief Law of 1997 (Customer Choice Law) is a prescriptive act that details a step-by-step transition for the Illinois electric utility industry, ARES and customers. "Experiments" are only offered in the context of billing experiments. (See 220 ILCS 5/16-106).

Next, IBEW makes something of a statutory construction argument in its opinions regarding the reciprocity provision. (IBEW Br. at 2-3). Instead of actually considering the reciprocity provision and the words in Section 16-115(d)(5), IBEW resorts to arguing conclusions. Accordingly, its arguments must be disregarded.

Finally, IBEW references the constitutional argument put forth by Blackhawk Energy in its

brief, and then concludes the Commission should be willing to take the chance of having the entire Customer Choice Law declared void. (IBEW Br. at 2-3). Aside from the real concern that an appellate court would declare the Customer Choice Law void, IBEW completely overlooks WPS-ESI's prior arguments on this issue. The facts are, the electric utilities have readied themselves for this transition, as permitted under the Customer Choice Law. They have divested themselves of their generating assets. Some are the beneficiaries of transition funding instruments. Many utilities have been recovering transition charges. Most utilities have been allowed to reorganize and restructure their business with little oversight and scrutiny by the Commission. If the Customer Choice Law is now declared void, it will be primarily at the expense of ARES and Illinois retail customers.

In conclusion, the IBEW brief should be stricken for the reasons set forth above. If the brief is not stricken, no weight should be accorded its arguments.

Dated this 27<sup>th</sup> day of April, 2001.

Respectfully submitted,

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IN THE STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

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NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on this 27<sup>th</sup> day of April, 2001, we have electronically filed with the Illinois Commerce Commission, Reply to Briefs on Exceptions on behalf of WPS Energy Services, Inc., along with Proof of Service thereon attached.

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PROOF OF SERVICE

STATE OF ILLINOIS        )  
                                      )       SS  
COUNTY OF MADISON     )

I, Edward C. Fitzhenry, being an attorney admitted to practice in the State of Illinois and one of the attorneys for WPS Energy Services, Inc., herewith certify that I did on the 27<sup>th</sup> day of April, 2001, electronically file with the Illinois Commerce Commission, Reply to Briefs on Exceptions on behalf of WPS Energy Services, Inc., and serve upon the persons identified on the attached service list, both electronically and by depositing same in the United States Mail, in Granite City, Illinois with postage fully prepaid thereon.

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SUBSCRIBED AND SWORN to me, a Notary Public, on this 27<sup>th</sup> day of April, 2001.

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Notary Public

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